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PATENT AND TRADEMARK OFFICE

**APPEAL BRIEF TRANSMITTAL &
PETITION FOR EXTENSION OF TIME**

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Application Number
09/913,484

Filing Date
November 20, 2001

Examiner
Kevin T. BATES

Art Unit
2532

Invention Title
**METHOD OF EFFECTIVE UTILIZATION
OF DATA PACKETS OF DIFFERING
CAPACITY AND A MASTER STATION
AND SUBSCRIBER DEVICE FOR A
COMMUNICATIONS SYSTEM**

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Date: December 27, 2006

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Signature: _____

Jong H. Lee

Further to the Notice of Appeal dated October 24, 2006 (received at the PTO on October 27, 2006) for the above-referenced application, enclosed are three copies of an Appeal Brief.

The Commissioner is hereby authorized to charge payment of the 37 C.F.R. § 41.20(b)(2) appeal brief filing fee of \$500, as well as any additional fees associated with this communication, to the deposit account of **Kenyon & Kenyon LLP**, deposit account number **11-0600**.

 (R. NO. 36,197)

Dated: December 27, 2006

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[10191/1963]

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES**

Application No. : 09/913,484
Applicant(s) : Vasco VOLLMER et al.
Filed : November 20, 2001
For : METHOD OF EFFECTIVE UTILIZATION OF DATA
PACKETS OF DIFFERING CAPACITY AND A MASTER
STATION AND SUBSCRIBER DEVICE FOR A
COMMUNICATIONS SYSTEM
Art Unit : 2155
Examiner : Kevin T. BATES
Confirmation No. : 1416

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Jong H. Lee

APPELLANTS' APPEAL BRIEF
UNDER 37 C.F.R. § 41.37

S I R :

Applicants filed a Notice of Appeal dated October 24, 2006 (received at the PTO on October 27, 2006), appealing from the Final Office Action dated April 24, 2006, in which claims 13-25 of the above-identified application were finally rejected. This Brief is submitted by Applicants in support of their appeal.

I. REAL PARTY IN INTEREST

The real party in interest in the present appeal is Robert Bosch GmbH of Stuttgart, Germany. Robert Bosch GmbH is the assignee of the entire right, title, and interest in the present application.

II. RELATED APPEALS AND INTERFERENCES

No appeal or interference which will directly affect, or be directly affected by, or have a bearing on, the Board's decision in the pending appeal is known to exist to the undersigned attorney or is believed by the undersigned attorney to be known to exist to Applicants.

III. STATUS OF CLAIMS

Claims 13-25 are pending in the present application, and all of the pending claims are being appealed. Claims 1-12 were canceled in the Preliminary Amendment dated August 15, 2001. Among the appealed claims, claims 13, 24 and 25 are independent, and claims 14-23 ultimately depend on claim 13.

IV. STATUS OF AMENDMENTS

No amendment has been made subsequent to the final Office Action mailed on April 24, 2006.

V. SUMMARY OF CLAIMED SUBJECT MATTER

With respect to independent claim 13, the present invention provides a method of effective utilization of data packets of differing capacity, the method including:

exchanging user data packets (Fig. 3 – LD) and control data packets (Fig. 3 – KD) between a master station (Fig. 1 – ZE) and subscribers (Fig. 1 – T), the user data packets having a data capacity which is a multiple of a data capacity of the control data packets; (Substitute Specification, p. 4, l. 25-37);

filling at least some containers for the user data packets each with a plurality of control data packets in a transmission frame (Fig. 3; p. 5, l. 7-9) according to an agreement between the master station and at least one of the subscribers (p. 5, l. 11-12), the agreement stipulating which of the containers for the user data packets are filled with control data packets (p. 5, l. 14-16), the control data packets which are stored in the containers for the user data packets being combined in a subframe (p. 5, l. 35-36), an external format of the subframe being adapted to a format of the user data packets (P. 5, l. 36-37); and

transferring the user data packets and the control data packets between the master station and the subscribers in a communications system having frame-oriented transmission (Fig. 1; p. 4, l. 35-37).

With respect to independent claim 24, the present invention provides a master station (Fig. 1 - ZE; Fig. 7) for a communications system having a frame-oriented transmission of data packets of differing capacity between the master station and subscribers (Fig. 1 - T), the master station allocating communications resources in a form of data packets for the subscribers, the subscribers requesting the communications resources from the master station, (p. 9, l. 26-33), the master station including:

a frame generator (Fig. 7 - RZG) configured to predefine a transmission frame; (p. 9, l. 33-35);

a multiplexer (Fig. 7 - MZX) configured to insert control data packets and user data packets into the predefined transmission frame (p. 9, l. 35-37), a data capacity of the user data packets being a multiple of a data capacity of the control data packets (p. 4, l. 25-37);

a selection unit (Fig. 7 - AZS) configured to determine, based on an agreement between the master station and at least one of the subscribers, whether containers for user data packets within the transmission frame are filled with control data packets (p. 10, l. 2-7); and

a demultiplexer (Fig. 7 – DZX) configured to separate user data packets and control data packets transmitted in a transmission frame and configured to send the separated user data packets and control data packets to the selection unit (p. 10, l. 8-18).

With respect to independent claim 25, the present invention provides a subscriber device (Fig. 1 – T; Fig. 8) for a communications system having frame-oriented transmission of data packets of differing capacity between a master station (Fig. 1 – ZE) and subscribers, the master station allocating communications resources in a form of data packets for the subscribers, (p. 9, l. 26-33), the subscribers requesting the communications resources from the master station, the subscriber device including:

a demultiplexer (Fig. 8 – DTX) configured to separate user data packets and control data packets from a transmission frame transmitted by the master station and configured to send the separated user data packets and control data packets to an analyzer unit; (p. 10, l. 8-22);

a multiplexer (Fig. 8 – MTX) configured to insert subscriber-side control data packets and user data packets into a transmission frame predefined by the master station (p. 9, l. 35-37; p. 10, l. 20-23), the user data packets having a data capacity that is a multiple of a data capacity of the control data packets (p. 4, l. 25-37); and

a selecting unit (Fig. 8 – ATS) configured to determine whether containers for user data packets are filled with a plurality of control data packets within the transmission frame based on an agreement between the master station and the subscriber device (p. 10, l. 2-7 and 20-23).

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The following ground of rejection is presented for review on appeal in this case:

(A) Whether pending claims 13-25 are anticipated under 35 U.S.C. § 102(e) by U.S. Patent No. 6,721,334 ("Ketcham").

VII. ARGUMENTS

A. Rejection of Claims 13-25 under 35 U.S.C. § 102(e)

Claims 13-25 were rejected under 35 U.S.C. § 102(e) as being anticipated by United States Patent No. 6,721,334 (“Ketcham”). Applicants respectfully submit that this rejection should be reversed for the following reasons.

To anticipate a claim under § 102(e), a single prior art reference must identically disclose each and every claim feature. See Lindeman Machinenfabrik v. American Hoist and Derrick, 730 F.2d 1452, 1458 (Fed. Cir. 1984). If any claimed feature is absent from a prior art reference, it cannot anticipate the claim. See Rowe v. Dror, 112 F.3d 473, 478 (Fed. Cir. 1997). Anticipation requires the presence in a single prior art reference disclosure of each and every feature of the claimed subject matter, arranged exactly as in the claim. Lindeman, 730 F.2d 1458 (Emphasis added). Additionally, not only must each of the claim features be identically disclosed, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter, as explained above. See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986). To the extent that the Examiner may be relying on the doctrine of inherent disclosure for the anticipation rejection, the Examiner must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

Claim 13 recites a method of effective utilization of data packets of differing capacity, which method includes, in relevant parts, “filling at least some **containers for the user data packets** each with a **plurality of control data packets** in a transmission frame **according to an agreement between the master station and at least one of the subscribers**, the agreement stipulating which of the containers for the user data packets are filled with control data packets, the control data packets which are stored in the **containers for the user data packets being combined in a subframe**, an external format of the subframe being adapted to a format of the user data packets.” Independent claims 24 and 25 recite substantially corresponding features.

Initially, Applicants note that a fundamental conceptual difference exists between the claimed invention and the subject matter of Ketcham. While Ketcham uses aggregate packets (each of which includes at least two packets) to reduce time delays due to contention periods, the present invention facilitates transmission of a large amount of control information more efficiently. Normally, control data is transmitted at the beginning of a frame with only a small slot capacity (short data packets), so it is normally necessary to use several frames to transmit more control data. The present invention addresses this issue by providing that unused capacity of containers assigned for user data packets may be filled with control data packets. However, this arrangement requires an agreement between a master station and the subscribers regarding which containers normally assigned for user data packets are filled with control data packets. By identifying which containers normally assigned for user data packets are filled with control data packets, it is ensured that control data packets contained in the containers for user data packets are properly interpreted as control data, and not as user data. As explained in further detail below, there is simply no suggestion of this arrangement in Ketcham.

In support of the rejection of claim 13, the Examiner contends in the Final Office Action that Ketcham teaches “filling at least some containers for the user data packets each with a plurality of control data packets in a transmission frame (col. 2, lines 61-67) according to an agreement between the master station and at least one of the subscribers (col. 3, lines 14-21), the agreement stipulating which of the containers for the user data packets are filled with control data packets, the control data packets which are stored in the containers for the user data packets being combined in a subframe, an external format of the subframe adapted to a format of the user data packets (col. 3, lines 1-6).” (Final Office Action, p. 2-3). Applicants respectfully submit that the actual disclosure of Ketcham clearly fails to teach or suggest the Applicants’ claimed features, as explained in detail below.

Initially, with respect to the claimed feature of “filling at least some **containers for the user data packets** each with a **plurality of control data packets** in a transmission frame,” Applicants note that the Ketcham’s disclosure has nothing to do with this feature. While the Examiner cites column 2, lines 61-67 of Ketcham as disclosing the above-recited claimed feature, this cited section merely states that the “aggregate packet can include more than just two packets,” and the “number of packets embedded in an aggregate

packet is limited primarily by the maximum packet size on the packet-based network.” Indeed, Ketcham merely provides for aggregating two or more individual packets 118-124 and transmitting the aggregate packet, instead of transmitting individual packets 118-124 separately. (See col. 1, l. 61-67; col. 2, l. 30-33 and 36-41). While Ketcham states that packet 122 is data information packet and packet 124 is control information (col. 1, l. 37-38), there is absolutely no suggestion of “filling at least some **containers** for the **user data packets** each with a plurality of **control data packets**.”

In an effort to remedy the above-noted deficiency of the teachings of Ketcham, the Examiner contends in the “Response to Arguments” section of the Final Office Action that “Ketcham discloses filling aggregate packets which can be considered user packets or any type of packet (col. 2, l. 61-67) with different types of packets including control packets (Fig. 4, element 124), [and] the **idea of a user packet can describe any type of packet**, so [Ketcham] teaches combining packets into a container or frame that gets sent over a network, which meets the limitation of filling a user packet with control packets and sending them over the network.” (Final Office Action, p. 7). In addition, the Examiner further contends in the Advisory Action (10/17/06) the following: a) “page 4, lines 25-30 of the specification . . . only shows exemplary definitions of a user data packet . . . [which] examples are not defining in terms of the ability [to] limit the term in the claim”; and b) “the user data packet contains some data and the control packet has some control information and . . . there is some distinction between the two,” and that this asserted “definition of the terms in the claims” is taught by Ketcham. However, the above-noted contention by the Examiner contains several critical flaws, as explained below.

First, to the extent the Examiner states that the disclosure of Ketcham “meets the limitation of **filling a user packet with control packets** and sending them over the network,” the Examiner is clearly ignoring the actual claim language: claim 13 clearly recites “filling . . . **containers** for the **user data packets**,” and there is simply no suggestion in Ketcham of any “**containers** for the user data packets.”

Second, to the extent the Examiner contends that “**the idea of a user packet can describe any type of packet**,” this interpretation is clearly incorrect for the purposes of the present anticipation analysis. Furthermore, the Examiner’s assertion that “exemplary definitions of a user data packet” are irrelevant “in terms of the ability [to] limit the term in

the claim,” Applicants note that this assertion is clearly contrary to the long-standing rule of claim interpretation, i.e., the **broadest reasonable interpretation** of the claims must also be **consistent with the specification and the interpretation that those skilled in the art would reach**. (See M.P.E.P. 2111, citing In re Hyatt, 211 F.3d 1367 (Fed. Cir. 2000), and In re Cortright, 165 F.3d 1353 (Fed. Cir. 1999)). In addition, Applicants note that even if one applied the Federal Circuit cases most favorable to the Examiner’s position, “the inventor’s written description of the invention, for example, is relevant and controlling insofar as it provides clear lexicography,” C. R. Bard Inc. v. United States Surgical Corp., 73 U.S.P.Q.2 d 1011, 1014 (Fed. Cir. 2004), which rule is clearly consistent with another long-standing rule that “Applicant may be his or her own lexicographer as long as the meaning assigned to the term is not repugnant to the term’s well known usage.” The Applicants’ specification clearly indicates that the term “user data packet” does not describe any type of packet, in contrast to the Examiner’s assertion; instead, Applicant’s specification clearly distinguishes between “user data packet” and “control data packet.” In particular, the specification indicates that “user data packet” refers to a data packet having “user data NF” and “a short header field KF containing data (e.g., sequence number and error correction bits) belonging directly to the container contents.” (Original Specification, p. 4, l. 25-32). The specification distinguishes the “user data packet” from “control data packet,” which contains control information. (Original Specification, p. 4, l. 23-25). The fact that the definitions of “user data packet” and “control data packet” provided in the Specification may be exemplary does not negate the rule that the **broadest reasonable interpretation** of the claims must also be **consistent with the specification and the interpretation that those skilled in the art would reach**. When properly viewed in light of Applicants’ specification, including the exemplary definitions, there is no reasonable basis for the Examiner’s interpretations that: a) the claimed “user data packet” can describe any type of packet; or b) “the user data packet contains some data and the control packet has some control information and . . . there is some distinction between the two,” and that this asserted “definition of the terms in the claims” is taught by Ketcham.

Independent of the above, nothing in Ketcham even remotely suggests that any “filling at least some **containers for the user data packets** each with a **plurality of control data packets** in a transmission frame” is performed “**according to an agreement between the master station and at least one of the subscribers, the agreement stipulating which of the containers for the user data packets are filled with control data packets.**” While the

Examiner cites column 3, lines 14-21 of Ketcham as teaching that the filling of the containers is performed **“according to an agreement between the master station and at least one of the subscribers, the agreement stipulating which of the containers for the user data packets are filled with control data packets,”** the cited section merely indicates “determining which network devices support aggregate packets.” The fact that individual data packets 118-124 may be aggregated has nothing to do with the above-recited claimed feature of **“an agreement between the master station and at least one of the subscribers . . . stipulating which of the containers for the user data packets are filled with control data packets.”** In fact, the only “agreement” disclosed in Ketcham relates to the **time delay** between sending of a probe packet and receiving of a response packet, i.e., Ketcham merely tests whether this time delay is shorter than a predetermined response period, in which case aggregate packets are supported. (See, e.g., col. 3, l. 13-20; col. 5, l. 5-18). This alleged “agreement” has absolutely nothing to do with the claimed “agreement between the master station and at least one of the subscribers, the **agreement stipulating which of the containers for the user data packets are filled with control data packets.**”

In an effort to remedy the above-noted deficiency of the teachings of Ketcham, the Examiner contends in the “Response to Arguments” section of the final Office Action that col. 4, l. 37-63 of Ketcham “shows that the master subscriber checks to see if the node can accept that certain type of packets, or whether single nodes have been given the ability to send and accept these aggregate packets, this is the same as agreeing on the ability to send these packets and setting up a connection between two router which have the ability and knowledge how to handle these packets, those router have agreed on the standard of transmission of aggregating and de-aggregating packets.” (Final Office Action, p. 8). However, the Examiner’s assertions are not only pure speculation, but completely ignore the actual claim limitations. The only statements in the cited section of Ketcham that are even remotely relevant to the claimed feature at issue are that “the router 308 will determine whether any hosts on the route support aggregate packets,” and that “[u]ntil a route is set up for aggregate packets, the router forwards the packets normally.” However, these statements simply do not support the Examiner’s conclusion that the claimed feature of “filling at least some **containers for the user data packets** each with a **plurality of control data packets** in a transmission frame” is performed **“according to an agreement between the master station and at least one of the subscribers, the agreement stipulating which of the**

containers for the user data packets are filled with control data packets.” To the extent the Examiner may be relying on the doctrine of inherent disclosure, there is simply no “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art.”

In addition to the above, to the extent the Examiner further states in the Advisory Action that col. 5, l. 12-31 of Ketcham teaches the claimed feature that “filling at least some **containers for the user data packets** each with a **plurality of control data packets** in a transmission frame” is performed “**according to an agreement between the master station and at least one of the subscribers**, the **agreement stipulating which of the containers for the user data packets are filled with control data packets**,” Applicants note that col. 5, l. 12-31 of Ketcham deals with “determining which of the network devices on that route support packet aggregation,” which has absolutely nothing to do with the claimed features at issue. Although the Examiner contends that this cited section of Ketcham teaches “a type of agreement, a question, an answer, and the conduct of that link in the network is adjusted based on the answer,” there is simply nothing in the cited section that is even remotely related to the claimed limitation that “**the agreement stipulat[es] which of the containers for the user data packets are filled with control data packets.**”

In addition to, and independent of, the above, nothing in Ketcham even remotely suggests “the **control data packets** which are stored in the containers for the user data packets being **combined in a subframe, an external format of the subframe adapted to a format of the user data packets.**” While the Examiner cites column 3, lines 1-6 of Ketcham as teaching this claimed feature, the cited section merely indicates that “each aggregate packet includes a fixed size table that describes the location and size of the embedded packets.” The fact that the aggregate packet includes a table describing the location of the component packets has nothing to do with “the **control data packets** which are **stored in the containers for the user data packets being combined in a subframe, an external format of the subframe adapted to a format of the user data packets.**” To the extent the Examiner contends in the “Response to Arguments” section of the final Office Action that “Ketcham discloses a format for combining different type of packets including control packets into an aggregate packet which is considered one complete packet while being transported over the network (Figure 7), which shows that there are subframes

combined into the container,” Applicants respectfully submit that the Examiner is once again ignoring the actual claim language: there is simply no suggestion in Ketcham that any **“control data packets which are stored in the containers for the user data packets”** are **“combined in a subframe,”** let alone that **“an external format of the subframe [is] adapted to a format of the user data packets.”**

To the extent the Examiner contends in the Advisory Action that “as seen in Figure 2, that is a user data packet format, then in Figure 7, this shows that there is a subframe, where control packets are combined, yet [it] contains the external format of a data packet,” this assertion is nothing more than the Examiner’s wishful interpretation that is completely irrelevant to the claimed features at issue. As clearly described in Ketcham, Fig. 2 merely shows the components of a packet in IEEE 802.3x network. (Col. 1, l. 51-53). While Ketcham discloses that the “structure of the aggregate packet [shown in Fig. 7] is similar to the structure of the IEEE 802.3 packet shown in Fig. 2,” nothing in Fig. 7 or any description associated with Fig. 7 provides any suggestion that **“control data packets which are stored in the containers for the user data packets”** are **“combined in a subframe,”** let alone that **“an external format of the subframe [is] adapted to a format of the user data packets.”**

In view of the foregoing, it is respectfully submitted that Ketcham completely fails to anticipate claim 13 and its dependent claims 14-23, as well as claims 24 and 25 which recited features substantially corresponding to the above-discussed features of claim 13. Accordingly, it is respectfully requested that the anticipation rejection of claims 13-25 should be reversed.

VIII. CONCLUSION

For the foregoing reasons, it is respectfully submitted that the final rejection of claims 13-25 should be reversed.

Claims Appendix, Evidence Appendix and Related Proceedings Appendix sections are found in the attached pages.

Respectfully submitted,

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 (R. NO. 36,197)

Dated: December 27, 2006

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APPENDIX TO APPELLANTS' APPEAL BRIEF
UNDER 37 C.F.R. § 41.37

CLAIMS APPENDIX

The claims involved in this appeal, claims 13-25, in their current form after entry of all amendments presented during the course of prosecution, are set forth below:

13. A method of effective utilization of data packets of differing capacity, comprising:

exchanging user data packets and control data packets between a master station and subscribers, the user data packets having a data capacity which is a multiple of a data capacity of the control data packets;

filling at least some containers for the user data packets each with a plurality of control data packets in a transmission frame according to an agreement between the master station and at least one of the subscribers, the agreement stipulating which of the containers for the user data packets are filled with control data packets, the control data packets which are stored in the containers for the user data packets being combined in a subframe, an external format of the subframe being adapted to a format of the user data packets; and

transferring the user data packets and the control data packets between the master station and the subscribers in a communications system having frame-oriented transmission.

14. The method according to claim 13, further comprising:

announcing the agreement by transmitting an announcement in a control data packet in advance of transferring the containers for the user data packets filled with control data packets.

15. The method according to claim 13, further comprising:

announcing the agreement using an announcement in a header field of the containers for the user data packet filled with control data packets.

16. The method according to claim 13, further comprising:

making the agreement by transmitting a request signal from the at least one of the subscribers to the master station.

17. The method according to claim 13, further comprising:

assigning to one of the subscribers by the master station a container for user data packets for transmission of control data packets after a predetermined number of requests for control data packets by the one of the subscribers.

18. The method according to claim 13, further comprising:

transmitting information regarding at least one of a type and a content of subsequent containers for user data packets filled with control data packets using at least a portion of a control data packet.

19. The method according to claim 18, further comprising:

storing an information element in the at least the part of the control data packet, the information element containing information about a number of occupied fields for control data packets within a subsequent container for user data packets.

20. The method according to claim 13, further comprising:

indicating information regarding a position of one of the containers for user data packets which is filled with control data packets within a block of user data packets using at least a portion of a control data packet.

21. The method according to claim 13, further comprising:

arranging each of the containers for user data packets which is filled with control data packets in a predetermined position within a respective block of cohesive user data packets.

22. The method according to claim 21, wherein each of the containers for the user data packets which are filled with control data packets is arranged at a beginning of the respective block of cohesive user data packets.

23. The method according to claim 13, further comprising:

storing an information element in a preceding control data packet for each container for user data packets which is filled with control data packets.

24. A master station for a communications system having a frame-oriented transmission of data packets of differing capacity between the master station and subscribers, the master station allocating communications resources in a form of data packets for the subscribers, the subscribers requesting the communications resources from the master station, the master station comprising:

a frame generator configured to predefine a transmission frame;

a multiplexer configured to insert control data packets and user data packets into the predefined transmission frame, a data capacity of the user data packets being a multiple of a data capacity of the control data packets;

a selection unit configured to determine, based on an agreement between the master station and at least one of the subscribers, whether containers for user data packets within the transmission frame are filled with control data packets; and

a demultiplexer configured to separate user data packets and control data packets transmitted in a transmission frame and configured to send the separated user data packets and control data packets to the selection unit.

25. A subscriber device for a communications system having frame-oriented transmission of data packets of differing capacity between a master station and subscribers, the master station allocating communications resources in a form of data packets for the subscribers, the subscribers requesting the communications resources from the master station, the subscriber device comprising:

a demultiplexer configured to separate user data packets and control data packets from a transmission frame transmitted by the master station and configured to send the separated user data packets and control data packets to an analyzer unit;

a multiplexer configured to insert subscriber-side control data packets and user data packets into a transmission frame predefined by the master station, the user data packets having a data capacity that is a multiple of a data capacity of the control data packets; and

a selecting unit configured to determine whether containers for user data packets are filled with a plurality of control data packets within the transmission frame based on an agreement between the master station and the subscriber device.

EVIDENCE APPENDIX

In the present application, there has been no evidence submitted pursuant to 37 C.F.R. §§ 1.130, 1.131 or 1.132, or other evidence entered by the Examiner and relied upon by Appellants in the present appeal.

RELATED PROCEEDINGS APPENDIX

No appeal or interference which will directly affect, or be directly affected by, or have a bearing on, the Board's decision in the pending appeal is known to exist.